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SENATE BILL 184

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Michael S. Sanchez

AN ACT

RELATING TO PUBLIC MONEY; ENACTING THE RECOVERY INVESTMENT BONDING ACT; AUTHORIZING THE ISSUANCE OF SHORT-TERM REVENUE BONDS, KNOWN AS "RECOVERY INVESTMENT NOTES", FOR THE PURPOSE OF SUPPLEMENTING REVENUE TO THE GENERAL FUND; PLEDGING GROSS RECEIPTS TAX REVENUE FOR THE RETIREMENT OF THE BONDS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Recovery Investment Bonding Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) the state, national and world economies have experienced a decline in economic activity that is of

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1 sufficient severity to place the state's finances in an
2 untenable position;

3 (2) in the current fiscal year, even after the
4 implementation of legislative and executive initiatives,
5 appropriations exceed expected revenues by almost three hundred
6 million dollars (\$300,000,000);

7 (3) for the next two fiscal years, it is
8 unlikely that the state will be able to cut expenditures or
9 increase revenues enough to fund essential state services at
10 even a minimum level;

11 (4) for the longer term, sustained economic
12 growth is expected, with a return to job creation and resulting
13 income and revenue growth; and

14 (5) New Mexico's general fund needs a short-
15 term influx of revenue, one which can be provided without any
16 severe, negative long-term effects, so that a minimum level of
17 essential state services can still be provided to citizens.

18 B. The purpose of the Recovery Investment Bonding
19 Act is to provide a mechanism for the state to borrow enough
20 money from its permanent funds to avoid extreme economic
21 hardship for its citizens, while providing a secure revenue
22 source that will pay the debt and guarantee that the long-term
23 health and stability of those funds are not threatened.

24 Section 3. [NEW MATERIAL] RECOVERY INVESTMENT NOTES
25 AUTHORIZATION--DISTRIBUTION OF PROCEEDS.--

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1 A. The state board of finance is authorized to
2 issue and sell revenue bonds, known as "recovery investment
3 notes", payable solely from the recovery investment bonding
4 fund, in compliance with the Recovery Investment Bonding Act
5 for the purpose of augmenting the balance of the general fund
6 in order to meet general fund appropriations. The bonds may be
7 issued when the secretary of finance and administration has
8 certified the need for the issuance of the bonds; provided that
9 the total amount of recovery investment notes outstanding at
10 any one time shall not exceed five hundred million dollars
11 (\$500,000,000).

12 B. The net proceeds from the sale of recovery
13 investment notes shall be deposited in the general fund and may
14 be used to meet appropriations from that fund.

15 C. After June 30, 2011, no additional recovery
16 investment notes shall be issued.

17 Section 4. [NEW MATERIAL] RECOVERY INVESTMENT BONDING
18 FUND CREATED--MONEY IN THE FUND PLEDGED.--

19 A. The "recovery investment bonding fund" is
20 created as a special fund within the state treasury. The fund
21 shall consist of money appropriated and transferred to the fund
22 and gross receipts tax revenues distributed to the fund by law.
23 Earnings of the fund shall be credited to the fund. Balances
24 in the fund at the end of any fiscal year shall remain in the
25 fund, except as provided in this section.

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1 B. Money in the recovery investment bonding fund is
2 pledged for the payment of principal and interest on all
3 recovery investment notes issued pursuant to the Recovery
4 Investment Bonding Act and is appropriated to the state board
5 of finance for the purpose of paying debt service, including
6 redemption premiums, on the recovery investment notes and the
7 expenses incurred in the issuance, payment and administration
8 of the notes.

9 C. On the last day of January and July of each
10 year, the state board of finance shall estimate the amount
11 needed to make debt service and other payments during the next
12 twelve months from the recovery investment bonding fund on the
13 recovery investment notes issued pursuant to the Recovery
14 Investment Bonding Act plus the amount that may be needed for
15 any required reserves. The state board of finance shall
16 transfer to the general fund any balance in the recovery
17 investment bonding fund above the estimated amounts.

18 D. Any balance remaining in the recovery investment
19 bonding fund shall be transferred to the general fund upon
20 certification by the state board of finance to the secretary of
21 finance and administration that the recovery investment notes
22 issued pursuant to the Recovery Investment Bonding Act have
23 been retired, that no additional obligations of the recovery
24 investment bonding fund exist and that no additional
25 expenditures from the fund are necessary.

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1 E. The recovery investment notes issued pursuant to
2 the Recovery Investment Bonding Act shall be payable solely
3 from the recovery investment bonding fund or, with the approval
4 of the bondholders, from such other special funds that may be
5 provided by law. The recovery investment notes do not create
6 an obligation or indebtedness of the state within the meaning
7 of any constitutional provision. No breach of any contractual
8 obligation incurred pursuant to that act shall impose a
9 pecuniary liability or a charge upon the general credit or
10 taxing power of the state, and the bonds are not general
11 obligations for which the state's full faith and credit is
12 pledged.

13 F. The state does hereby pledge that the recovery
14 investment bonding fund shall be used only for the purposes
15 specified in this section and shall be pledged first to pay the
16 debt service on the recovery investment notes issued pursuant
17 to the Recovery Investment Bonding Act. The state further
18 pledges that any law authorizing the distribution of taxes or
19 other revenues to the recovery investment bonding fund or
20 authorizing expenditures from the fund shall not be amended or
21 repealed or otherwise modified so as to impair the bonds to
22 which the recovery investment bonding fund is dedicated as
23 provided in this section.

24 Section 5. [NEW MATERIAL] AUTHORITY TO REFUND BONDS.--The
25 state board of finance may issue and sell recovery investment

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1 notes to refund outstanding recovery investment notes by
2 exchange, immediate or prospective redemption, cancellation or
3 escrow, including the escrow of debt service funds accumulated
4 for payment of outstanding bonds, or any combination thereof,
5 when, in its opinion, such action will be beneficial to the
6 state.

7 Section 6. [NEW MATERIAL] RECOVERY INVESTMENT NOTES--
8 FORM--EXECUTION.--

9 A. The state board of finance, except as otherwise
10 specifically provided in the Recovery Investment Bonding Act,
11 shall determine at its discretion the terms, covenants and
12 conditions of recovery investment notes, including, but not
13 limited to, date of issue, denominations, maturities, rate or
14 rates of interest, call features, call premiums, registration,
15 refundability and other covenants covering the general and
16 technical aspects of the issuance of the bonds; provided that
17 the term of investment recovery notes shall not exceed five
18 years.

19 B. The recovery investment notes shall be in such
20 form as the state board of finance may determine, and
21 successive issues shall be identified by alphabetical,
22 numerical or other proper series designation.

23 C. Recovery investment notes shall be signed and
24 attested to by the state treasurer and shall be executed with
25 the facsimile signature of the governor and the facsimile seal

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1 of the state, except for notes issued in book entry or similar
2 form without the delivery of physical securities. Any interest
3 coupons attached to the notes shall bear the facsimile
4 signature of the state treasurer, which officer, by the
5 execution of the notes, shall adopt as the treasurer's own
6 signature the facsimile thereof appearing on the coupons.
7 Except for notes issued in book entry or similar form without
8 the delivery of physical securities, the Uniform Facsimile
9 Signature of Public Officials Act shall apply, and the state
10 board of finance shall determine, the manual signature to be
11 affixed to the bonds.

12 Section 7. [NEW MATERIAL] PROCEDURE FOR SALE OF RECOVERY
13 INVESTMENT NOTES.--

14 A. Recovery investment notes shall be sold by the
15 state board of finance at such times and in such manner as the
16 board may elect, consistent with the need as certified by the
17 secretary of finance and administration.

18 B. Recovery investment notes shall be sold only at
19 private sale for a negotiated price and only to the state
20 investment officer as an investment of the land grant permanent
21 funds or the severance tax permanent fund.

22 Section 8. [NEW MATERIAL] RECOVERY INVESTMENT BONDING ACT
23 IS FULL AUTHORITY FOR ISSUANCE OF NOTES--LEGAL INVESTMENTS.--

24 A. The Recovery Investment Bonding Act shall,
25 without reference to any other act of the legislature, be full

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1 authority for the issuance and sale of recovery investment
2 notes, which notes shall have all the qualities of investment
3 securities under the Uniform Commercial Code and shall not be
4 invalid for any irregularity or defect or be contestable in the
5 hands of bona fide purchasers or holders thereof for value.

6 B. Recovery investment notes are legal investments
7 for the land grant permanent funds and the severance tax
8 permanent fund.

9 Section 9. [NEW MATERIAL] SUIT MAY BE BROUGHT TO COMPEL
10 PERFORMANCE.--Any holder of recovery investment notes or any
11 person or officer being a party in interest may sue to enforce
12 and compel the performance of the provisions of the Recovery
13 Investment Bonding Act.

14 Section 10. A new section of the Tax Administration Act
15 is enacted to read:

16 "[NEW MATERIAL] DISTRIBUTION--RECOVERY INVESTMENT BONDING
17 FUND--GROSS RECEIPTS TAX.--A distribution pursuant to Section
18 7-1-6.1 NMSA 1978 shall be made to the recovery investment
19 bonding fund from the net receipts attributable to the gross
20 receipts tax imposed by the Gross Receipts and Compensating Tax
21 Act in the amount of nine million five hundred thousand dollars
22 (\$9,500,000) for the purpose of making debt service payments on
23 outstanding recovery investment notes pursuant to the Recovery
24 Investment Bonding Act. The distribution shall be made:

25 A. after the required distribution pursuant to

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1 Section 7-1-6.4 NMSA 1978;

2 B. contemporaneously with other distributions of
3 net receipts attributable to the gross receipts tax for payment
4 of debt service on outstanding bonds or to a fund dedicated for
5 that purpose; and

6 C. prior to any other distribution of net receipts
7 attributable to the gross receipts tax."

8 Section 11. DELAYED REPEAL.--The Recovery Investment
9 Bonding Act and Section 10 of this 2010 act are repealed on the
10 earliest of the following dates:

11 A. the first day of the first month following the
12 month in which the state board of finance certifies to the
13 secretary of finance and administration, the secretary of
14 taxation and revenue, the legislative council service and the
15 New Mexico compilation commission that the recovery investment
16 notes issued pursuant to the Recovery Investment Bonding Act
17 have been retired, that no additional obligations of the
18 recovery investment bonding fund exist and that no additional
19 expenditures from that fund are necessary; or

20 B. July 1, 2016.

21 Section 12. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.

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